Civil Misc. writ petition No.232 of 2001

M/s Bharat Heavy Electricals Ltd…… Petitioner

Versus

State of U.P. and others …… Respondents

Connected with

Civil Misc. writ petition No. 233 of 2001 (24527 of 1996)

M/s Bharat Heavy Electricals Ltd…… Petitioner

Versus

State of U.P. and others …… Respondents

…….

Hon'ble P. C. Verma, J.

The two writ petitions are related to each other in which two Awards made by the Labour Court in respect of the same employee-respondent no.3 have been challenged Award dated 28.2.1995 has been challenged in the writ petition no. 31224 of 1995, whereas it is the Award dated 31.08.1995 which is under challenge in the second writ petition.

The relevant facts may be set forth. The petitioner(BHEL) is an undertaking of the Government of India engaged in the production of the heavy electrical equipments. The respondent no.3 Teekam Singh Verma was initially appointed as Apparantice Turner on 28.02.1970. On completion of apparanticeship training, he was appointed on the post of Trademan, Grade IV-Turner, w.e.f. 10.02.1971 and was promoted as Trademan Grade-III w.e.f. 03.07.1974. He allegedly committed theft of bronze weighing about 23 kgs. of the company on 9.05.1979 and was caught red-handed by the Security Staff. An F.I.R. u/s 379/411, I.P.C. was lodged against him and in consequence of it, he was criminally prosecuted. Departmental action was also taken against him as per the standing orders duly certified under Industrial Employment

(Standing Order)Act, 1946. He was placed under suspension and charge-sheeted on 12.05.1979. Another chargesheet was lateron served on him for absence from duty without permission. Ultimately, after departmental inquiry he was dismissed from service on 31.1.1980. The respondent no.3 filed an appeal dated 12.2.1980 before departmental appellate authority. During the pendency of such appeal, he also filed a mercy appeal on 19.03.1980 for being excused of his mis-conduct and for being given a chance to serve on temporary or permanent basis. Taking a sympathetic and humanitarian approach, the petitioner allowed the mercy appeal and appointed the respondent no.3 back in employment afresh as temporary Turner under Temporary Labour Authorisation w.e.f. 20.05.1980.

However, the temporary employment of the respondent no.3 was also dis-continued w.e.f. 14.02.1981 on the ground of negligence and his request was re-appointment was declined. He raised a dispute under the Industrial Dispute Act which was registered as Adjudication Case No. 8 of 1983 before the Labour Court. Reference was made by State Government on 30.12.1982. By Award dated 19.5.1987, the termination of the respondent no.3 was treated to be unjustified and he was directed to be reinstated. Accordingly, he was re-instated as temporary Turner.

In the meantime, it is happened that the respondent no.3 was convicted by the trial Court in theft case of 9.5.1979 and was sentenced to six months R.I. by judgment dated 6.11.1982. But, his appeal against conviction was allowed by the Sessions Judge on 23.6.1983 and he was acquitted being given benefit of doubt.

Reference was then made by the Government on 29.4.1985 to the Labour Court to adjudicate the legality of the dismissal order dated 31.01.1980 which had culminated into the passing of the Award dated 28.02.1995 under challenge by the employer (petitioner) in the first

writ petition. By this Award, the Labour Court had held the dismissal of the respondent no. 3 to be illegal and has directed his re-instatment with full back wages.

Another reference was by the Government on 21.9.1990 as to whether it was legal and justified not to treat the respondent no.3 as Turner, Grade III w.e.f. 20.5.1980. The Award has been made by the Labour Court that the respondent no.3 was entitled to be treated as Turner Grade-III w.e.f. 20.5.1980 with all other consequential benefits. The employer has challenged this Award in the second petition.

This Court has heard the arguments of learned counsel appearing for both the sides. Material on record has also been carefully perused.

No doubt, the respondent no.3 was acquitted in appeal and was given benefit of doubt in respect of the theft case of 9.5.1999, but the point of the matter is that the employer could simultaneously hold department action against him in accordance with the standing orders under the Industrial Employment (Standing orders) Act, 1946. Clause 20 of the said Standing Order relates to major mis-conduct and theft is mis-conduct under clause 20(c) of the certified standing orders. copy of which has been annexed as Annexure 3 to the first writ petition. Clause 21 provides the penalties for mis-conduct(major). Theft is a major mis-conduct and dismissal is one of the penalties provided therefor. Argument from the side of the respondent no.3 is that no proper inquiry had been held against him and penalty of dismissal had wrongly been inflicted on him. However, there is no material on record to substantiate his such contention. Indeed, it can not be established by casual or bald statement. Moreover, truth of the matter is that after having been awarded this penalty of misconduct, he had preferred a departmental appeal

and during the pendency of the same had made a mercy appeal for being given a chance to serve in permanent or temporary capacity. It tantamounted to not pressing his departmental appeal on merits and only staicking to his prayer of being given a chance of re-employment. In this view of the matter, his appointment as temporary Turner w.e.f. 20.5.1980 is to be treated as fresh appointment divorced from the post. The respondent no.3 did accept this reality fairly for a long time. However, he attempted to have an upper edge after his conviction relating to the incident of theft of 9.5.1979 was set aside in appeal by the Sessions Judge on 23.06.1983 giving him benefit or doubt. No such industrial dispute could be raised by him for two fold reasons. Firstly, as mentioned earlier, criminal proceedings and department action in relation to the petitioner, were two different proceedings permissible under law, which could go together and the acquittal of respondent no.3 in criminal case on his appeal having been allowed by the Sessions Judge giving him benefit of doubt could not eclipse the decision taken in departmental proceeding, which had been held with full opportunity to him. Secondly, he himself has not pressed his departmental appeal on merits against dismissal. Instead, he had preferred a mercy appeal for being given re-employment which prayer of his had been accepted by the petitioner. To state this another way, his appointment as Temporary turner w.e.f. 20.5.1980 on his mercy appeal was a fresh appointment for all practical purposes.

In view of the above, discussion, the Award dated 28.2.1995 passed by the Labour Court can not be sustained. For the same reasoning as discussed above, second Award dated 31.08.1995 can also not be upheld. Therefore, there could be no question of treating the respondent no.3 as Turner Grade III w.e.f. 20.5.1980 and giving him all consequential benefits. In fact, he

started his service journey afresh as temporary Turner w.e.f. 20.5.1980 and has to be treated as such.

In the result, both the writ petitions are hereby allowed. The Awards of the Labour Court dated 28.02.1995 and 31.08.1995 are quashed.

16.8.2001
P. Singh

(P. C. Verma, J.)